IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No. 2483 of 2007

Date of decision: 17.10.2007

M/s Prabhat Fertilizer and Chemical Works ..... Petitioner

Versus

Additional Director, Directorate of Revenue Intelligence ..... Respondent

Coram: Hon'ble Mr. Justice M.M.Kumar
Hon'ble Mr. Justice Ajay Kumar Mittal

Present: Mr. Jagmohan Bansal, Advocate,
for the petitioner.

Mr. Sanjeev Kaushik, Advocate,
for the respondent.

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M.M.Kumar, J.

This petition filed under Article 226 of the Constitution prays for issuance of direction to the respondent either to issue show cause notice to the petitioner or return its bank guarantee, which was furnished by the petitioner in respect of the goods seized by the respondent. The petitioner had imported certain goods during April' and May' 2006 and the bill of entry was filed. The goods were cleared after framing of assessment order under Section 47 of the Customs Act, 1962 (for brevity 'the Act'). However, on 25.04.2006, the factory premises of the petitioner-firm along with the factory of sister concern and even the residence of partners of the petitioner-firm were searched by the respondent. It was alleged that the petitioner had mis-declared the value of the imported goods at the time of filing of bill of entry and the petitioner had short paid duty as compared to their actual liability.

The petitioner had earlier filed CWP No. 8674 of 2006 in this

Court, which came up for hearing before a Division Bench on 06.06.2006. It was directed by this Court that the goods be released after framing provisional assessment at US Dollars 1000 PMT instead of US Dollars 1800 PMT. The Division Bench has also imposed a condition that the goods lying in the factory be released subject to the petitioner's furnishing the bank guarantee of Rs. 15 lacs. The writ petition was disposed of on 21.07.2006 by recording the finding that the goods were released and further proceedings were in progress. The Division Bench also directed the respondent to finalize the proceedings expeditiously in accordance with law.

The present writ petition has been filed with the complaint that neither the show cause notice has been issued nor the bank guarantee furnished by the petitioner has been returned although the period of six months and even extended period of six months as envisaged by Section 110 of the Act has expired. The petitioner has complained that un-necessary delay has been caused.

Mr. Kaushik, learned counsel for the respondent has stated that a show cause notice has now been issued in respect of the instant case on 21.09.2007 although other show cause notices were earlier issued on 16.03.2007, 29.03.2007 and 22.06.2007. According to the learned counsel for the respondent, the case of the petitioner would be covered by proviso to Section 28 of the Act, which provide extended period of five years because the show cause notice discloses a willful concealment of facts by the petitioner and the period of six months or one year as envisaged by Section 110 was not to apply.

After hearing the learned counsel, we find that the prayer made by the petitioner is wholly without substance. Once a show cause notice in respect of the instant case has been issued to the petitioner with the allegation of willful concealment of facts, then the revenue may be

entitled to the benefit of proviso to Section 28 of the Act. At this stage, it is not appropriate to record any findings as to whether Section 110 would apply or the provisions of proviso to Section 28 of the Act would apply. In any case, the petitioner cannot complain that at this stage this Court should record a finding that only Section 110 of the Act would apply. Therefore, the writ petition is liable to be dismissed.

For the reasons aforementioned, this petition fails and the same is accordingly, dismissed. However, it is made clear that the instant order shall not be construed as an expression of opinion on merits of the case by adjudicating authority or any other authorities. All the issues have been left open including the issue as to whether Section 110 or Section 28 of the Act would apply.

(M.M.KUMAR)
JUDGE

(AJAY KUMAR MITTAL)
JUDGE

October 17, 2007
pj